STATE OF MICHIGAN

COURT OF APPEALS

PATRICK HAENER and GWENDOLYN HAENER,

Plaintiffs-Appellants,

v

WILLIAM ROBBINS and DIANA ROBBINS,

Defendants-Appellees,

and

ERIC BENASH,

Defendant.

UNPUBLISHED
September 27, 2002

No. 232486
Wayne Circuit Court
LC No. 00-002103-CH

Before: O'Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

In this action to quiet title, plaintiffs Patrick and Gwendolyn Haener appeal by right the circuit court's order granting defendants William and Diana Robbins' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

In 1995, the Haeners purchased a home in Huron Township near Inkster. In 1999, their adjoining neighbors, the Robbinses, informed the Haeners that the Robbinses' title history showed that a 20-by-110-foot strip of the Haeners' property actually belonged to the Robbinses. According to the Haeners, their attached garage is just over the Robbinses' claimed property line and just on the twenty-foot strip so that the home violates the local setback ordinance.

Defendant Eric Benash was the original owner of the property in dispute. In 1987, he split the property into parcels A, B, and C. Parcel B eventually became the Haeners' property. Parcel C eventually became the Robbinses' property. Benash recorded a survey that showed the property line between parcels B and C to be "596.82 feet from the East ¼ corner of Section 25." In 1992, Benash conveyed parcel C to the Mangeno family who sold it to the Robbinses in 1993.

In 1989, Benash allegedly entered into an agreement with his neighbor, a Mr. Higgins. Pursuant to this agreement, a survey was prepared in which Benash was to convey twenty feet of the south side of parcel B to Higgins, his neighbor to the south, and twenty feet was to be added

to the north side of parcel B. Unfortunately, the survey was never recorded with the county Register of Deeds.[1]

In 1989, Benash sold parcel B to the Jones family. The legal description showed the correct property line of "596.82 feet from the East ¼ corner of Section 25." When the Robbinses purchased parcel C, parcel B was then owned by the Rowland family and the Rowlands' deed correctly showed the legal description including the 596.82-foot measurement. On June 27, 1995, the Rowlands sold parcel B to Patricia Brandly. This deed showed the property line to be only "*576.82* feet from the East ¼ corner of Section 25," which afforded parcel B an additional twenty feet than the previous deed in the chain of title (emphasis added). Brandly then sold the parcel to the Haeners with the incorrect legal description that included the twenty-foot strip that neither party had actually owned.

First, the Haeners contend that the circuit court erred in failing to reform their deed to correct the alleged boundary mistake in the legal description of the Robbinses' deed. Equitable actions to quiet title are reviewed de novo, but deference is given to a circuit court's factual findings, reviewed under the clearly erroneous standard. *Gorte v Dep't of Transportation*, 202 Mich App 161, 171; 507 NW2d 797 (1993); *Grand Rapids v Green*, 187 Mich App 131, 135; 466 NW2d 388 (1991), citing MCR 2.613(C). In this case, the Haeners essentially contend that the mutual mistake occurred in both their own and the Robbinses' chains of title. We disagree.

"The power of a court of equity to grant relief by way of reformation of a conveyance of property, or other instrument in writing, on the ground of mutual mistake is not open to question." *Potter v Chamberlin*, 344 Mich 399, 407; 73 NW2d 844 (1955). If a deed fails to express the parties' meeting of the minds, particularly the parties' visual understanding of the property, the deed will also be reformed. *Etherington v Bailiff*, 334 Mich 543, 52; 55 NW2d 86 (1952). "The burden of establishing such mistake is upon the party who seeks reformation. The evidence must be convincing and must clearly establish the right to reformation." *Rupe v Cingros*, 7 Mich App 146, 152; 151 NW2d 178 (1967), quoting *Stevenson v Aalto*, 333 Mich 582, 589; 53 NW2d 382 (1952).

In this case, the "mistake" the Haeners allege is that Benash intended to lawfully transfer twenty feet of the Robbinses' property to what would become the Haeners' property. However, the Haeners complain, Benash mistakenly did not record this transfer. That is, the Haeners claim that the boundary line the parties have used for four years, including the twenty-foot strip, is the correct one. Further, the Haeners argue that the Robbinses' entire chain of title has the old mistaken legal description encompassing the disputed twenty-foot strip. Consequently, the Haeners are *not* requesting reformation of their *own* deed, but are requesting limited or full reformation of *the Robbinses'* deed.

This is not a "mutual mistake." As the Haeners quote in their brief on appeal, "[i]n order to decree the reformation of a written instrument on the ground of mistake, that mistake must be mutual and common to *both parties to the instrument*." *Stevenson*, *supra* at 589 (emphasis

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[1] Thus, the legal description of parcel B in this survey does not take precedence. MCL 565.29; *Pauley v Hall*, 124 Mich App 255, 265; 335 NW2d 197 (1983).

added). Instead, the Haeners have a mistake in their own deed's legal description, as Brandly's deed did. Moreover, the Haeners were not a mutually mistaken party to the same instrument as the Robbinses, so they have no valid claim for limited or full reformation. See, e.g., *Stevenson*, *supra* at 589, and *Kidder v Collum*, 61 Mich App 281, 282, 287-288; 232 NW2d 384 (1975) (suits against predecessors in title for reformation based on mutual mistake in same instrument). Because the Haeners were not mutually mistaken with a party to their deed regarding the boundary line they allege Benash intended, there is no question of fact that the Haeners' argument for reformation must fail. See *Rupe*, *supra* at 152. This is also true for the reasons stated in our analysis of the Haeners' second issue on appeal.

Second, the Haeners claim that because the Robbinses did not have bona fide purchaser status under Michigan's recording statutes, the circuit court erroneously granted summary disposition to the Robbinses on the Haeners' quiet title action. We disagree.

"Michigan's recording statute, MCL 565.29[,] provides that an unrecorded conveyance in land is void as against a subsequent bona fide purchaser who: (1) records his or her deed first, and (2) did not have actual notice of the previous deed." *Pauley v Hall*, 124 Mich App 255, 265; 335 NW2d 197 (1983). In the present case, the legal description in the Robbinses' chain of title encompassed the disputed twenty-foot strip of land. At least part of the Haeners' unrecorded chain of title had a legal description including the twenty-foot strip. The register of deeds contains both original deeds before the survey Benash allegedly made transferring the twenty-foot strip, each showing that the disputed property belongs to the Robbinses. Because the Haeners' deed with the legal description including the twenty-foot strip was not properly recorded, it is void against the Robbinses, "subsequent bona fide purchaser[s] who . . . record[ed] . . . [their] deed first, and . . . did not have actual notice of" the property line the Haeners now claim. *Id*., citing MCL 565.29. The legal description of 596.82 feet contained in the Robbinses' deed was recorded before the legal description of 576.82 feet in the Brandly deed was, and the survey showing the twenty-foot transfer was never recorded. Thus, at the time the Robbinses purchased their property, they did not have actual notice of the previous survey and the contrary legal description it contained. See *id*.

As a result, while the Robbinses used the Haeners' version of the boundary line for four years, apparently unaware of their deed's contrary legal description, they thought they were using the boundary line described in their own deed. That is, they had no notice of the twenty-foot strip survey made after their own deed's legal description was first recorded. Therefore, the Robbinses cannot be charged with notice of the survey or its alternative legal description because policy dictates that they not be penalized for something they could not have known.[2] See *id*.; *Meacham v Blaess*, 141 Mich 258, 260; 104 NW 579 (1905).

Third and finally, the Haeners argue that the circuit court erred in denying their motion for reconsideration based on the doctrine of acquiescence to title. Again, we disagree. MCR 2.119(F)(3) states the standard for deciding this motion:

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[2] We note that in 1999, the Haeners received a $65,000 settlement from their title insurance company for this incident.

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Thus, a circuit court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Kokx v Bylenga*, 241 Mich App 655, 658-659; 617 NW2d 368 (2000).

The doctrine of acquiescence holds that opposing parties who agree to or use a particular property line for a fifteen-year period are estopped from denying that property line in the future. See *Corrigan v Miller*, 96 Mich App 205, 183; 92 NW2d 181 (1980); *Walters v Snyder (After Remand)*, 239 Mich App 453, 458; 608 NW2d 97 (2000). Unlike an adverse possession claim, "[a] claim of acquiescence does not require that the possession be hostile or without permission." *Walters*, *supra* at 456. To establish the fifteen-year period, tacking the acquiescence of predecessors in title is permissible. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001), citing *Jackson v Deemar*, 373 Mich 22, 26, 127 NW2d 856 (1964).

It is undisputed that in this case, even with tacking periods of ownership of the parties' predecessors in title, there was no acquiescence for a fifteen-year period. *Corrigan*, *supra* at 183; *Killips*, *supra* at 260. Benash conducted a survey purportedly transferring a twenty-foot strip to what would become the Haeners' property in approximately 1988, and the Robbinses reclaimed the twenty-foot strip in 1999. Thus, even if all the parties' predecessors in title used the property line the Haeners now claim, the required fifteen-year period never elapsed. Therefore, we do not find that the circuit court abused its discretion in denying the Haeners' motion for reconsideration. MCR 2.119(F)(3); *Kokx*, *supra* at 658-659.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra